

IC 14-34-15

Chapter 15. Inspections, Monitoring, and Enforcement

IC 14-34-15-1

Duties of permittees regarding records and reports

Sec. 1. (a) To aid in the enforcement of this article, the director shall require each permittee to establish and maintain the information and records required by the commission by rule.

(b) Each permittee shall do the following:

(1) Perform the following administrative duties:

(A) Establish and maintain appropriate records.

(B) Make monthly reports to the director.

(C) Install, use, and maintain any necessary monitoring equipment or methods.

(D) Evaluate results in accordance with:

(i) the methods;

(ii) the locations;

(iii) the intervals; and

(iv) the manner;

that the director prescribes.

(E) Provide other information relative to surface coal mining and reclamation operations that the department considers reasonable and necessary.

(F) Without delay allow the director or the director's authorized representative to:

(i) have access to or copy any records; and

(ii) inspect any monitoring equipment or method of operation;

required under this article.

(2) Conspicuously maintain at the entrance to the surface coal mining and reclamation operation a clearly visible sign that sets forth the name, business address, phone number, and permit number of the operation.

(3) Allow the director or the director's authorized representative to enter, upon presentation of credentials and without advance notice, the permittee's surface coal mining and reclamation operation. The director or the director's authorized representative has the following:

(A) The right of entry to, upon, or through any surface coal mining and reclamation operation or any premises in which any records required to be maintained under subdivision (1) are located.

(B) At reasonable times and without delay:

(i) access to and authority to copy any records; and

(ii) authority to inspect any monitoring equipment or method of operation;

required under this article.

As added by P.L.1-1995, SEC.27.

IC 14-34-15-2

Operations removing or disturbing strata serving as aquifers

Sec. 2. (a) For those surface coal mining and reclamation operations that remove or disturb strata that serve as aquifers that significantly ensure the hydrologic balance of water use either on or off the mining site, the director shall specify the following:

- (1) Monitoring sites to record the quantity and quality of surface drainage above and below the mine site as well as in the potential zone of influence.
- (2) Monitoring sites to record level, amount, and samples of ground water and aquifers potentially affected by the mining and also directly below the lowermost (deepest) coal seam to be mined.
- (3) Records of well logs and borehole data to be maintained.
- (4) Monitoring sites to record precipitation.

(b) The monitoring, data collection, and analysis required by this section shall be conducted according to standards and procedures set forth by rules of the commission to assure reliability and validity.

As added by P.L.1-1995, SEC.27.

IC 14-34-15-3**Minimum inspections**

Sec. 3. (a) The director shall inspect the surface coal mining and reclamation operation covered by a permit issued under this article on an irregular basis with, at a minimum, the following:

- (1) One (1) partial inspection per month.
- (2) One (1) complete inspection per calendar quarter.

(b) In addition to the inspections conducted under subsection (a), the director shall inspect the surface coal mining and reclamation operation covered by a permit issued under this article whenever, on the basis of any information available to the director, including receipt of information from any person, the director has reason to believe that the operation is in violation of this article or the commission's rules. The inspection must occur within ten (10) days of receipt of the notification. If the inspection results from information provided by any person, the person may accompany the director on the inspection.

(c) All inspections must occur without prior notice to the permittee or the permittee's agents or employees except for necessary onsite meetings with the permittee.

As added by P.L.1-1995, SEC.27.

IC 14-34-15-4**Inspection report**

Sec. 4. (a) Following completion of the inspections required under section 3 of this chapter, the inspector shall file an inspection report. The inspection report must include information sufficient to allow the director to enforce the requirements and carry out the purposes of this article.

(b) A copy of any record, report, inspection material, or other information obtained under this chapter, other than material

designated as confidential under this article, must be available to the public at the following:

- (1) The department.
- (2) A public library in the county in which the mining operation is located.

As added by P.L.1-1995, SEC.27.

IC 14-34-15-5

Notification of violations

Sec. 5. (a) If, due to an inspection under section 3 of this chapter, the director or an inspector determines a violation of:

- (1) this article; or
- (2) a rule adopted under this article;

has occurred, the director or inspector shall notify the permittee in writing of the violation and make a reasonable attempt to verbally notify the permittee upon discovery of the violation.

(b) The written notification must do the following:

- (1) Contain a detailed description of each violation.
- (2) Fix a reasonable time not exceeding ninety (90) days for abatement of the violation.
- (3) Provide an opportunity for a public hearing under section 9 of this chapter.

(c) A notice of violation issued under subsection (a) is effective when served upon the permittee and is governed by IC 4-21.5-3-6. However, the notice of violation is subject to an application for temporary relief under section 9 of this chapter.

As added by P.L.1-1995, SEC.27.

IC 14-34-15-6

Ordered cessation of coal mining and reclamation operations

Sec. 6. (a) As used in this section, "imminent danger to the health or safety of the public" means the existence of:

- (1) a condition;
- (2) a practice; or
- (3) a violation of a permit or other requirement of this article;

in a surface coal mining and reclamation operation that could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation is abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose the person to the danger during the time necessary for abatement.

(b) If the director or inspector determines that:

- (1) a condition or practice exists or a violation of this article or the commission's rules has occurred that:
 - (A) creates an imminent danger to the health or safety of the public; or
 - (B) is reasonably expected to cause significant, imminent environmental harm to land, air, or water resources; or
- (2) the permittee has not abated the violation within the time set

under section 5 of this chapter;
the director shall order the cessation of surface coal mining and reclamation operations or the part relevant to the condition, practice, or violation. In the cessation order, the director shall determine the steps necessary to abate the violation in the most expeditious manner.

(c) If the director or inspector finds that the ordered cessation of surface coal mining and reclamation operations, or any part, will not completely abate:

- (1) the imminent danger to health or safety of the public; or
- (2) the significant imminent environmental harm to land, air, or water resources;

the director shall, in addition to the cessation order, impose affirmative obligations on the operator requiring the operator to take whatever steps the director considers necessary to abate the imminent danger or the significant environmental harm.

(d) The cessation order is effective for thirty (30) days after actual notice of the order is sent to the permittee unless:

- (1) the director determines the violation is abated;
- (2) the order is modified, vacated, or terminated under section 8 of this chapter; or
- (3) an informal public hearing is held in the county in which the surface coal mining and reclamation operation is located, in which case the effectiveness of the order may be more or less than thirty (30) days.

(e) A cessation order issued under subsection (b) is effective when served upon the permittee.

As added by P.L.1-1995, SEC.27.

IC 14-34-15-7

Permit suspension or revocation

Sec. 7. (a) As used in this section, "unwarranted failure to comply" means the failure of a permittee to:

- (1) prevent the occurrence of a violation of:
 - (A) the permittee's permit; or
 - (B) a requirement of this article; or
- (2) abate a violation of:
 - (A) the permit; or
 - (B) this article;

due to indifference, lack of diligence, or lack of reasonable care.

(b) If, on the basis of an inspection, the director determines that:

- (1) a pattern of violations of the requirements of:
 - (A) this article or IC 13-4.1 (before its repeal);
 - (B) the rules adopted under IC 14-34-2-1 or IC 13-4.1-2-1 (before its repeal); or
 - (C) permit conditions required by this article or IC 13-4.1 (before its repeal);

exists or has existed; and

- (2) the violations:
 - (A) are caused by the unwarranted failure of the permittee to comply with:

(i) the requirements of this article or IC 13-4.1 (before its repeal);

(ii) the rules adopted under IC 14-34-2-1 or IC 13-4.1-2-1 (before its repeal); or

(iii) permit conditions required by this article or IC 13-4.1 (before its repeal); or

(B) are willfully caused by the permittee;

the director shall issue an order of permit suspension or revocation and shall provide opportunity for a public hearing under subsection (d).

(c) An order issued under:

(1) subsection (b); or

(2) IC 13-4.1-11-6 (before its repeal);

is subject to IC 4-21.5-3-6 and becomes an effective and final order of the commission without a proceeding if a request for review of the order is not filed with the director within thirty (30) days after the order is served upon the permittee.

(d) If a hearing is requested under IC 4-21.5-3-7, the director shall conduct the hearing in accordance with IC 4-21.5. The director shall notify all interested parties of the time, place, and date of the hearing.

(e) In a hearing requested under IC 4-21.5-3-7, the director has the burden of going forward with evidence demonstrating that the permit in question should be suspended or revoked. This burden is satisfied if the director establishes a prima facie case that:

(1) a pattern of violations of the requirements of:

(A) this article or IC 13-4.1 (before its repeal);

(B) the rules adopted under IC 14-34-2-1 or IC 13-4.1-2-1 (before its repeal); or

(C) permit conditions required by this article or IC 13-4.1 (before its repeal);

exists or has existed; and

(2) the violations were:

(A) willfully caused by the permittee; or

(B) caused by the unwarranted failure of the permittee to comply with the requirements of:

(i) this article or IC 13-4.1 (before its repeal);

(ii) the rules adopted under IC 14-34-2-1 or IC 13-4.1-2-1 (before its repeal); or

(iii) a permit condition required by this article or IC 13-4.1 (before its repeal).

(f) For the purposes of subsection (e), the unwarranted failure of the permittee to pay any fee required under this article or under IC 13.4.1 (before its repeal):

(1) constitutes a pattern of violations; and

(2) requires the permittee to show cause why the permit should not be suspended or revoked under this section.

(g) If the director demonstrates in a hearing requested under IC 4-21.5-3-7 that the permit in question should be suspended or revoked, the permittee has the ultimate burden of persuasion to show cause why the permit should not be suspended or revoked. A

permittee may not challenge the fact of any violation that is the subject of a final order of the director.

(h) Within sixty (60) days after the conclusion of the hearing on the merits, the commission shall issue to the parties a final written decision. The final written decision must include the reasons for the determination of the commission on the suspension or revocation of the permit.

(i) If the commission revokes a permit, the permittee shall do the following:

(1) Immediately cease surface coal mining and reclamation operations on the permit area.

(2) Complete reclamation within a time period set by the director. If reclamation is not completed within that time period, the permittee forfeits the applicable bond.

As added by P.L.1-1995, SEC.27.

IC 14-34-15-8

Notice or order requirements

Sec. 8. (a) The director or inspector, as appropriate, shall sign each written notice or order issued under this chapter and promptly deliver the notice or order to the permittee. The notice or order must set forth with particularity the following:

(1) The nature of the violation.

(2) The remedial action required.

(3) The time established for abatement.

(4) A reasonable description of the part of the surface coal mining and reclamation operation to which the notice or order applies.

(b) The director may modify, vacate, or terminate a notice or order issued under:

(1) this chapter; or

(2) IC 13-4.1-11 (before its repeal).

As added by P.L.1-1995, SEC.27.

IC 14-34-15-9

Application for review

Sec. 9. (a) Any person having an interest that is or may be adversely affected by the issuance under this chapter or under IC 13-4.1-11 (before its repeal) of:

(1) a notice of violation;

(2) a cessation order;

(3) the modification of a notice of violation or a cessation order;

(4) the vacation of a notice of violation or a cessation order; or

(5) the termination of a notice of violation or a cessation order;

may apply to the commission for review of the notice, order, modification, vacation, or termination within thirty (30) days from the date of issuance. The filing of an application for review does not operate as a stay of an order or a notice.

(b) Upon receipt of an application for review under subsection (a), the commission shall conduct an investigation of the circumstances

relating to the issuance of the notice or order or modification, vacation, or termination of the notice or order. The investigation shall provide an opportunity for a public hearing to enable interested persons to present information relating to:

- (1) the issuance and continuance of the notice or order; or
- (2) the modification, vacation, or termination of the notice or order.

(c) If a public hearing is requested under subsection (b), the commission shall do the following:

- (1) Conduct the hearing in accordance with IC 4-21.5-3.
- (2) Give written notice to the permittee and other interested parties of the time and place of the hearing at least five (5) days before the hearing.

(d) Upon completion of the investigation conducted under subsection (b), the commission shall make findings of fact and issue a written final decision. The written final decision must include an order vacating, affirming, modifying, or terminating the notice or order or the modification, vacation, or termination of the notice or order. If:

- (1) the application for review concerns an order for cessation of a surface coal mining and reclamation operation; and
- (2) the cessation order has directly or indirectly ordered the ceasing of surface or underground mining activities;

the commission shall issue the written decision within thirty (30) days of receipt of the application for review unless the commission under subsection (e) or the court under judicial review of the commission's decision under IC 4-21.5-5 grants temporary relief.

(e) Pending completion of the investigation and hearing required by subsection (b) and the hearing required by section 7 of this chapter, the applicant may file with the commission a written request that the commission grant temporary relief from a notice or an order issued under this chapter or under IC 13-4.1-11 (before its repeal). The written request must include a detailed statement of the reasons why temporary relief is appropriate. The commission shall issue an order or a decision granting or denying the requested relief expeditiously. However, if the applicant requests relief from an order for cessation of coal mining and reclamation operations issued under section 6 of this chapter, the commission shall issue the order or decision on the request within five (5) days of receipt of the request. The commission may grant temporary relief, under the conditions that the commission prescribes, if the following conditions are met:

- (1) A hearing was held in the locality of the permit area on the request for temporary relief in which all parties were given an opportunity to be heard.
- (2) The applicant showed there is substantial likelihood that the findings of the commission will be favorable to the applicant.
- (3) Temporary relief will not do any of the following:
 - (A) Adversely affect the health or safety of the public.
 - (B) Cause significant, imminent environmental harm to land, air, or water resources.

As added by P.L.1-1995, SEC.27.

IC 14-34-15-10

Costs and expenses

Sec. 10. Whenever an order is issued:

- (1) under this chapter or under IC 13-4.1-11 (before its repeal); or
- (2) as a result of an administrative proceeding under this article or under IC 13-4.1 (before its repeal) instituted at the request of a person;

the court, resulting from judicial review, or the commission may assess against either party to the proceeding an amount of money, determined by the commission, equal to the aggregate amount of all costs and expenses, including attorney's fees, reasonably incurred by the person for or in connection with the person's participation in the proceedings, including any judicial review of agency actions.

As added by P.L.1-1995, SEC.27.

IC 14-34-15-11

Injunctions; restraining orders; other orders

Sec. 11. The director may request the attorney general to institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order, in an appropriate court in the county in which the surface coal mining and reclamation operation is located if a person does any of the following:

- (1) Violates or fails or refuses to comply with an order issued by the director under:
 - (A) IC 13-4.1 (before its repeal); or
 - (B) this article.
- (2) Interferes with, hinders, or delays the director in carrying out this article.
- (3) Refuses the director admittance to the person's surface coal mining and reclamation operation.
- (4) Refuses to permit the director to inspect the person's surface coal mining and reclamation operation.
- (5) Refuses to furnish any information or report requested by the director under this article.
- (6) Refuses to permit access to and copying of any records that the director considers necessary to carry out this article.

As added by P.L.1-1995, SEC.27.

IC 14-34-15-12

Civil action

Sec. 12. (a) In addition to other remedies available under statutory or common law, a person with an interest that is or may be adversely affected may commence a civil action on the person's own behalf to compel compliance with this article against any of the following:

- (1) A person allegedly in violation of:
 - (A) this article;

- (B) a commission rule adopted under this article; or
- (C) a notice or an order issued under:
 - (i) IC 13-4.1 (before its repeal); or
 - (ii) this article.

However, a commencement of an action under this subdivision must occur in the county in which the surface coal mining and reclamation operation complained of is located.

(2) The director or the commission to the extent permitted by the Constitution of the State of Indiana and IC 34-13-3 if the person allegedly fails to perform an act or a duty required under this article. However, commencement of an action under this subdivision must occur in the county in which the complained of action should have taken place.

(b) A person may not commence an action under subsection (a)(1):

(1) less than sixty (60) days after notice is given by the person to:

- (A) the director;
- (B) the commission; and
- (C) an alleged violator; or

(2) if the director or the state has commenced a civil action and is diligently prosecuting the action to require compliance with:

- (A) this article;
- (B) a commission rule adopted under this article; or
- (C) a notice or an order issued under:
 - (i) IC 13-4.1 (before its repeal); or
 - (ii) this article.

However, any person may intervene in the action as a matter of right.

(c) A person may not commence an action under subsection (a)(2) less than sixty (60) days after the person has notified the director or the commission in writing of the intention to commence an action. However, the person may commence an action immediately after the written notification if the alleged violation:

- (1) constitutes an imminent threat to the health or safety of the person; or
- (2) would immediately affect a legal interest of the person.

(d) In an action commenced under subsection (a)(2):

- (1) the director;
- (2) the commission; or
- (3) the Secretary of the United States Department of the Interior;

may intervene as a matter of right.

(e) The court may, in issuing a final order in an action brought under subsection (a), award the costs of litigation, including attorney's and expert witness fees, to any party if the court determines the award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Indiana Rules of Trial Procedure.

(f) This section does not restrict a right that a person or class of persons has under a statute or common law to do the following:

(1) Seek enforcement of the following:

(A) This article.

(B) The rules adopted under this article.

(2) Seek any other relief, including relief against the commission.

As added by P.L.1-1995, SEC.27. Amended by P.L.1-1998, SEC.112.

IC 14-34-15-13

Violations at surface mining site; citations

Sec. 13. (a) A person who is or may be adversely affected by a surface mining operation may notify the director or any representative of the director responsible for conducting the inspection, in writing, of a violation of this article that the person has reason to believe exists at the surface mining site.

(b) The commission shall by rule establish procedures for informal review of a refusal by a representative of the director to issue a citation with respect to such an alleged violation.

(c) The director shall furnish the person requesting the review a written statement of the reasons for the director's final disposition of the case.

As added by P.L.1-1995, SEC.27.

IC 14-34-15-14

Inspections

Sec. 14. (a) The commission shall by rule establish procedures to ensure that adequate and complete inspections are made.

(b) A person may notify the director of a failure to make an inspection, after which the director shall determine whether an adequate and complete inspection has been made.

(c) The director shall furnish the person a written statement of the reasons for the director's determination that an adequate and complete inspection has or has not been conducted.

As added by P.L.1-1995, SEC.27.

IC 14-34-15-15

Action for damages

Sec. 15. (a) A person whose person or property is injured through the violation by an operator of a rule, an order, or a permit issued under:

(1) IC 13-4.1 (before its repeal); or

(2) this article;

may bring an action for damages, including reasonable attorney's and expert witness fees. The action must be brought in the circuit or superior court with jurisdiction in the county in which the surface coal mining operation complained of is located.

(b) This section does not affect the rights established by or limits imposed under IC 22-3-1 and IC 22-3-2.

As added by P.L.1-1995, SEC.27.

IC 14-34-15-16

Intervention

Sec. 16. A person subject to this article who:

- (1) is entitled to request a hearing under IC 4-21.5-3; or
- (2) has an interest that may be adversely affected by the outcome of a hearing under IC 4-21.5-3;

may intervene in the hearing.

As added by P.L.1-1995, SEC.27.